

# Quarterly Business Report

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Second Quarter 2011

## ***Dear Business Leader:***

It's been a particularly eventful quarter in the Secretary of State's office.

While I did manage to get out and about the state a few times to share my message about Nevada's history of economic resilience that I wrote about in our last quarterly report, the State Legislature kept me within "on-call" distance of the legislative building for the most part. I actively supported several pieces of legislation of great interest to the business community, including bills that restructure economic development and further streamline the entity formation process.

I'm also very pleased to report that the state has finally come into the light as far as campaign contribution and expense reporting and other campaign finance reforms. You'll find more information on all of the legislation of interest inside this report.

And of course, a historic turn of events required a lot of our attention in the last quarter. My Elections Division had barely closed the books on the 2010 general election when the news came that for the first time in its history, Nevada would be holding a special election to fill a vacancy in the U.S. House. The Nevada Supreme Court had to make the final determination of how the special election will be conducted. A total of four names, one candidate each from the Republican, Democratic, and Independent American parties and one Non-Partisan will appear on the September 13th ballot.

And everybody who plans to run for a state or congressional seat in 2012 is still waiting to see the boundaries or their districts and who their constituents will be. As Chief Elections Official, I'll be closely watching the resolution of redistricting.

So, as usual, never a dull moment in the Secretary of State's office. I'm pleased to again be able to share some of the news with you. Thanks for taking a look.



*Secretary of State Ross Miller plays political and pop culture trivia with students from the Sandy Miller Academy (Las Vegas). Secretary Miller has entertained and educated hundreds of students who have visited Carson City during his term in office.*

## **Inside This Issue**

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# News from the 2011 Legislative Session

I'm a firm believer that the innovation we can create through technology will rev up the economic engine in Nevada. And it's the only way we'll be able to make government resilient and responsive to those we serve. The current economic downturn has created the impetus for us to put technology to use in ways that government has never tried before and I'm proud of the level of online services my office is able to offer, in spite of significant cuts in our budget and staffing.

My ultimate goal is to use technology to facilitate innovation, rather than block entrepreneurial efforts. That is why in the 2011 Legislature, I championed AB 564 – a bill introducing Digital Corporate Governance to Nevada.

Imagine a world in which corporate formation has fully adapted to the internet age; a corporate environment in which entrepreneurs and collaborators can come together virtually to conduct business, make money, and enjoy all the privacy and other benefits of a traditional corporation....but with no paper filings, no physical headquarters, and no board room meetings. My goal is to create a virtual fast track for taking an idea, and through innovation, turning it into a business reality.

In researching the precise language for AB 564, I borrowed heavily from my friend, Professor Oliver Goodenough, a Professor of Law at the Vermont Law School and an expert in corporate formation law. Vermont has started to move to Digital Corporate Governance, but has not yet fully engaged, giving Nevada an opportunity to be the leading innovator.

As Professor Goodenough has written, the ease with which new startups can be established within an economy has a direct impact on its potential for growth.

You're probably all familiar by now with the new Nevada Business Portal, which will be a one-stop shop for conducting business to government transactions. The provisions of AB 564 will take the Portal a step further by changing the rules for LLC's.

## Digital Corporate Governance Comes to Nevada A report from Secretary Miller

Digital Corporate Governance will:

- ♦ Provide users with a template for basic operating agreements and by-laws that they can adapt for their own use and file in digital format.
- ♦ Allow officers or directors to provide written consent to adopt operating agreements and by-laws in electronic format.
- ♦ Allow LLC's to conduct corporate communications through the most recent technology available, including a variety of electronic communications.
- ♦ Allow certain non-profit board of directors meetings to be conducted through electronic means, including simultaneous or sequential communications channels such as instant messaging.
- ♦ Allows the Secretary of State to adopt regulations further interpreting references to "meeting," "writing," and other terms.

One of the common barriers to entrepreneurial innovation is the absolutely mystifying bureaucracies necessary to start a business the old-fashioned way. I have been working hard to tear down those barriers. The adoption of AB 564 allows us to be an innovator in removing them altogether and creating a virtual wave of innovation here in Nevada.

### Secretary of State Miller travels state to share his message of economic innovation and resiliency

If your business organization would like to hear more from Secretary Miller about digital corporate governance, the Nevada Business Portal, or new economic development efforts, please contact Sallie Lincoln at 775-684-5709 or [slincoln@sos.nv.gov](mailto:slincoln@sos.nv.gov). Secretary Miller will make presentations as his schedule allows.

# Restructuring Economic Development in Nevada

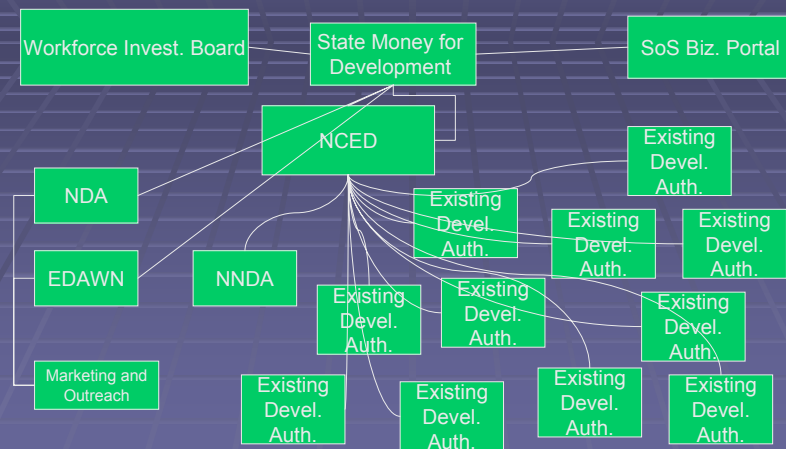
One of the many positive highlights of the 2011 legislative session was the enactment of AB 449, a plan to restructure how the public and private sectors work together to encourage economic development in Nevada.

The Secretary of State's office is included in the restructuring for several reasons: the office generates millions of dollars in business license and other revenue for the state general fund; the office is the gateway for entities that recognize the many advantages of forming in Nevada and uses those contacts and the data generated to

promote the state's business-friendly environment; and the office is uniquely positioned to use technology to facilitate innovation, rather than discourage it with agonizingly antiquated filing procedures. All of these elements of the Secretary of State's role in economic development will become seamless this year with the launch of the new Nevada Business Portal. The Portal will offer businesses a single, web-based point of entry where wizard technology will walk them through the process of setting up shop here, further distinguishing Nevada as a jurisdiction that meets and exceeds the private sector's expectations for government service.

For all of these reasons, the Secretary of State will play a highly visible role in the newly structured effort.

### Where We Are Today: Disjointed Current Efforts

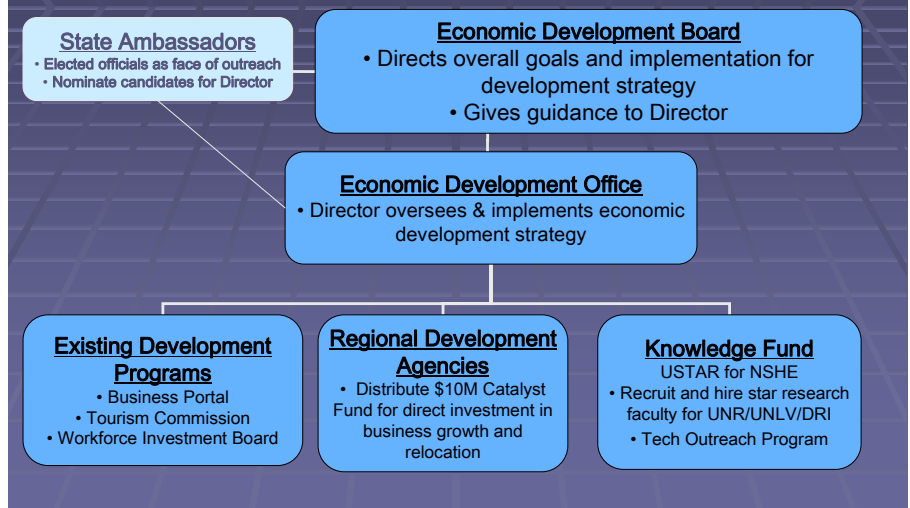


He will serve on the Advisory Council along with other executive and legislative leaders. Members will use their offices to promote the state as an ideal place to do business. The Council will break into teams as economic development efforts transition from the old structure to the new; the Secretary of State will oversee one of the teams responsible for an immediate and sharply focused research project to identify best industry practices, promising cluster industries, and unique innovation opportunities.

The Secretary of State will also serve on the new Board of Economic Development that will recommend the overall state strategy, recommend legislation, and advise staff on restructuring existing economic development authorities and the awarding of incentives and grants.

Secretary Miller is wasting no time fulfilling his new duties. The Office has entered into two contracts to begin the baseline analysis and provide a research-based foundation for crafting the new statewide economic growth agenda for Nevada.

### Long Term Economic Development Structure



## More News from the 2011 Legislative Session

### State Bar Bill Affects Business

SB 405 of the 2011 Session of the Nevada Legislature, the State Bar Association Bill, changes various provisions of NRS Title 7 pertaining to business entities. Among the changes are several that will affect business entity filings in the Secretary of State's Commercial Recordings Division. SB 405 clarifies the effective date of amendatory documents and allows for a specific effective date and time.

The bill also affords 501(c)(3) nonprofit corporations formed pursuant to NRS Chapter 81 the same exemption from the State Business License as those formed pursuant to NRS Chapter 82. It also adopts many of the provisions of the Model Business Corporations Act related to electronic records, delivery and retention of documents by corporations and is complementary to AB 564, the Secretary Miller's Digital Governance legislation.

The bill also amends provisions of NRS Title 7 relating to restrictions on certain mergers; stock transfers; dissolutions; shareholders' rights and noticing requirements; and Charging Order provisions. The detailed text of the bill may be found at [http://www.leg.state.nv.us/Session/76th2011/Bills/SB/SB405\\_EN.pdf](http://www.leg.state.nv.us/Session/76th2011/Bills/SB/SB405_EN.pdf)

## Notarial Acts Streamlined

Responding to a need expressed by Nevada businesses, Secretary Miller championed changes in laws governing notaries to streamline their procedures.

- ◆ Notaries may now make just one entry in their journal for more than one notarial act, if the acts documented are for the same person at the same time and on one document or similar documents.
- ◆ When taking an acknowledgment, a notary need not require a signature in the journal if the notary has personal knowledge of the client and has performed a notary act for them in the last six months.
- ◆ The new statute also requires notaries to keep their journal and stamp in a secure location when not in use to protect the integrity of the profession through increased security.

## Office Receives International Awards

Secretary of State Ross Miller's office received two Merit Awards for Outstanding Innovation at the 2011 Annual Conference of the International Association of Commercial Administrators (IACA) in Winnipeg, Manitoba, Canada; The Secretary of State's Online Articles project, implemented in December of 2010, allows customers to file articles of incorporation/organization for domestic (Nevada) corporations and limited liability companies (LLCs) online through its website. The filing is immediate and requires no additional expedite fee. Since its December launch through June 2011, 19,488 articles or 53% of all articles have been filed online. Usage of the Online Articles service continues to increase with 3,264 or 59% filed in June of 2011.

The Office also received a Merit Award for e-Customer Services which included Online Trust Account System, Website Redesign and E-Notifications. These processes provide our customers better and more timely information and allows them to better manage their business with the office. Submissions were judged on magnitude of change, time to implement, cost, general appeal, benefit to the customer and benefit to the filing office.

Deputy Secretary for Commercial Recordings Scott Anderson accepted the honors on behalf of Secretary of State Ross Miller and staff.

### ***Upcoming Notary Training Classes***

#### Las Vegas, Gold Coast Hotel

Sept. 14 -- 1-5 PM

Sept. 15 -- 8 AM - noon

#### Reno, Atlantis Casino Resort

Sept. 29 -- 8 AM - noon

#### Elko, Red Lion Inn

October 26 -- 5 PM - 9 PM

Pre-registration required at:

[www.nvsos.gov](http://www.nvsos.gov)

## More News from the 2011 Legislative Session

### Landmark Campaign Finance Reforms Enacted

Secretary of State Ross Miller says Nevada voters scored a historic victory with the enactment of his comprehensive package of campaign finance reform. The three bills will make it easier for voters to see who is providing financial support to campaigns and how campaign money is spent, and they will increase the transparency of activities of committees for political action (PACs) and other third-party groups.

“Nevada has entered a new era of greater accountability and transparency in political campaigns with Assembly Bills 81, 82 and 452”, Secretary Miller says in describing the bills. “Voters will have access to an online searchable database to see who is contributing to campaigns and how candidates and organizations are spending their funds. Third-party groups, including those from out-of-state, who have had an increasing presence in Nevada elections, will now be required to disclose to Nevada’s voters who they are and who is financing their political activities in this state.”

Assembly Bills 81, 82, and 452 address a number of reforms:

#### **Contribution and Expense Reporting**

- ◆ All candidates for public office will now file contribution and expense reports electronically with the Secretary of State’s office. Electronic filing centralized in one office allows creation of a database that can be searched by candidate, contributor, dollar amounts, and other data.
- ◆ All campaign contribution and expense reports will be filed at least four days before the start of early voting in primary and general elections, rather than just before election day when a majority of voters have already cast their ballots.

#### **Political Action Committees & other expenditures**

- ◆ All PACs, parties, committees, and individuals who spend more than \$100 on a public communication such as a radio or TV ad, billboard, or mass mailing must identify in the communication who paid for it.
- ◆ All PACs, parties, committees and individuals who spend more than \$100 to influence the outcome of a Nevada election must register with the Secretary of State and file annual contribution and expense reports.
- ◆ If a PAC fails to register with the Secretary of State prior to engaging in political activity in the state, the Secretary of State may impose a civil penalty for each separate ad or activity.
- ◆ Individuals are prohibited from contributing to a PAC with the knowledge and intent that the PAC will contribute that money

to a specific candidate if the contribution puts the individual over the authorized limits on contributions to a single candidate.

- ◆ A foreign national may not make contributions to Nevada campaigns, and soliciting, accepting, or receiving any campaign contributions from foreign nationals will be illegal under state law, as well as federal law.

- ◆ During the period in which making and accepting contributions of \$5000 or more to state legislators, the Lieutenant Governor, and Governor are prohibited, the acts of making a commitment to contribute to a campaign or soliciting a future contribution will also be prohibited.

#### **Voter Registration**

- ◆ Expanding online voter registration to all counties will be conducted in such a way to ensure security and consistency across the state.
- ◆ A voter registration agency may not knowingly employ a person to register voters if the person has been convicted of a felony involving theft or fraud.
- ◆ A county clerk or registrar may not knowingly appoint a person as a field registrar if the person has been convicted of a felony involving theft or fraud.
- ◆ Threatening a person or using intimidation in connection with the registration of voters could constitute a category E felony crime.

#### **Miscellaneous provisions**

- ◆ Individual minor party candidates can be placed on the ballot only if the party obtains ballot access as already required by law.
- ◆ Acts of tampering or interfering with or attempting to tamper or interfere with a mechanical voting system or computer program used to count ballots is punishable as a category B felony.
- ◆ Requirements to register as a Ballot Advocacy Group (BAG) to support or oppose a ballot question are deleted from statute; individuals and organizations must register as a PAC to engage in political activity to support or oppose a ballot question.
- ◆ The reporting threshold for such groups is lowered from \$10,000 in contributions and/or expenditures to \$1,000 during any reporting period.
- ◆ State holidays are not excluded from the early voting period.

## ***Secretary Miller Acts to Prevent Abuse of Business License Exemptions***

An Executive Branch audit of business license filings in the Secretary of State's office that began in July of 2010 found that a significant number of businesses are falsely claiming they are exempt from paying the annual business license fee. Secretary of State Ross Miller requested the audit in an effort to level the playing field for the thousands of businesses that maintain good standing in Nevada.

The audit found the state will experience nearly \$11 million in lost revenue in the next fiscal year due to the significant increase in the number of businesses that claim to be exempt from annual business license requirements, but in fact, don't qualify under state statutes. The law requires any person or entity that performs a service or engages in a trade for profit to obtain an annual state business license. Home-based businesses that currently make less than \$27,000 a year in net earnings are exempt from the requirements, as are a very limited number of other types of business.

After observing a significant increase in the number of exemptions claimed in the last several years, Secretary Miller asked for the Executive Branch audit. The audit indicates a substantial increase in current practices that encourage "Title 7" entities, including corporations and LLCs, to claim the exemption.

The Secretary of State's office also conducted its own internal investigation of a limited number of businesses and could not detect a single instance where the identified businesses were properly claiming an exemption. The investigation found that 73% of the entities investigated were falsely claiming the business license exemption. The remainder of the entities did not respond to inquiries from investigators and have had their charters to do business in the state revoked.

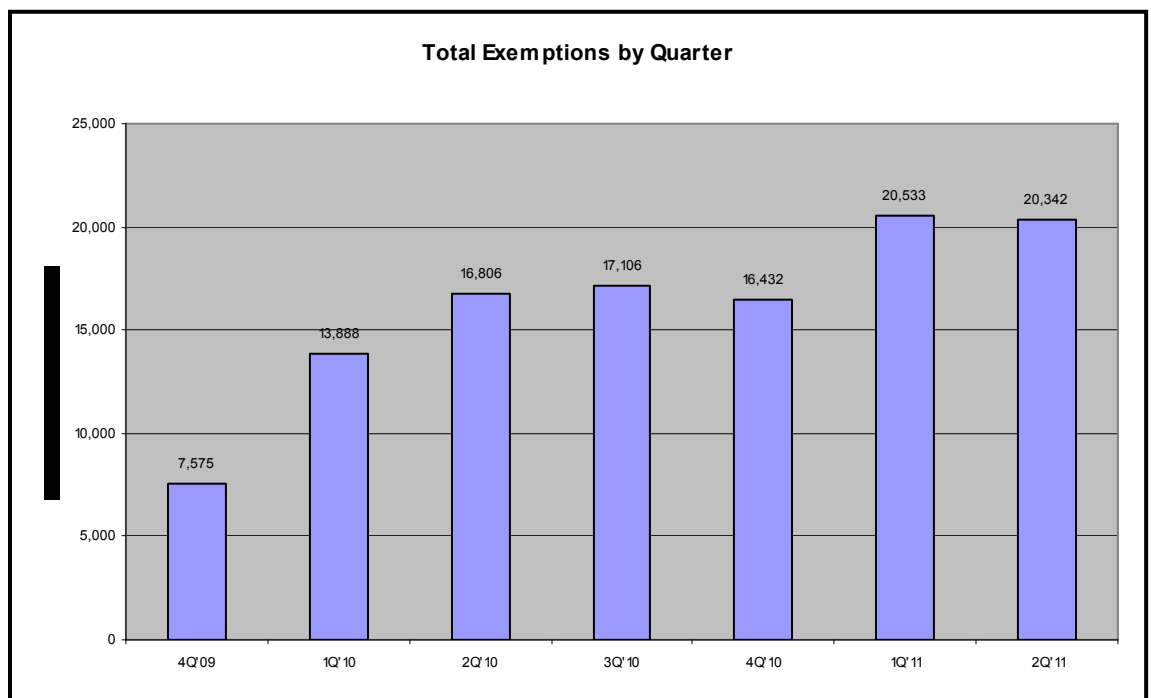
The Executive Branch audit also identified the likelihood that a significant number of businesses in the state have not filed for an exemption or obtained a business license. By comparing local government business license records to the Secretary of State's records, auditors found 22.5% of locally-licensed businesses do not have a state license, constituting another nearly \$4 million in lost revenue to the state (nearly \$2 million if the current sunset provision is enacted on June 30).

Secretary Miller has accepted the audit's recommendations and will take steps in the coming weeks to ensure that businesses that are required to obtain a state business license in Nevada come in to and stay in compliance with the law.

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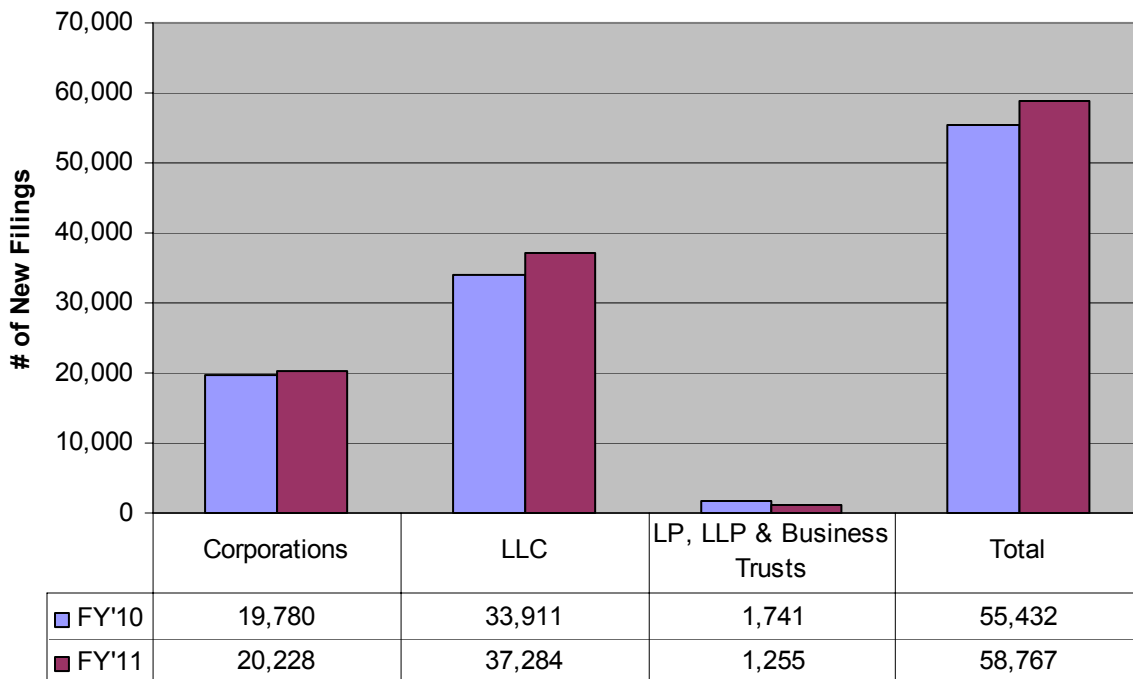
The number of business entities claiming a home-based exemption from state business license requirements has more than doubled since the Secretary of State's office assumed responsibility for issuing licenses, a period of less than two years.

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## Latest Statistics from Commercial Recordings

**New Filings - FY'10 vs FY'11**



New filings were up 6% at the end of Fiscal Year 2011 compared to FY 2010. The numbers are consistent with the findings of the latest [Quarterly Economic & Business Activity Report](#). Second quarter numbers in the calendar year continue to show significant increases.

**New Filings - 2Q'10 vs 2Q'11**

